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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/538,084	11/15/2005	Bernd Walther	VAL 203 P2	1502
34232 7590 09/10/2009 MATTHEW R. JENKINS, ESQ. 2310 FAR HILLS BUILDING DAYTON, OH 45419				
EXAMINER				
GRAHAM, GARY K				
ART UNIT		PAPER NUMBER		
3727				
MAIL DATE		DELIVERY MODE		
09/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/538,084

Applicant(s)

WALTHER ET AL.

Examiner

Gary K. Graham

Art Unit

3727

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 29 June 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 8, 9, 12-15 and 18-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6, 7, 10, 11, 16 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/003)
Paper No(s)/Mail Date 20050608
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Election/Restrictions

Applicant's election with traverse of Group I, figure 1d, in the reply filed on 29 June 2009 is acknowledged. The traversal is on the ground(s) that the subject matter of claim 1 is not known. Applicant is apparently arguing that the stops of Ostrowski '842 are not designed such that they can be moved or removed such that the swaying element when the wiper drive is mounted on a support frame, can be moved from a first mounting position, which lies outside the pivoting range, into the pivoting range without being obstructed by the stop. This is not found persuasive because the stops of Ostrowski can be moved or removed, in particular removed, in just such a way. If the stops of Ostrowski are removed, which it is clearly disclosed that they can be as they are screws or bolts, what keeps the swaying element (4) of Ostrowski from being moved in whatever manner is so desired? It appears removal of the stops will allow movement of the swaying element without such being obstructed by the stops, during movement between at least two positions, at least as far as defined.

The requirement is still deemed proper and is therefore made FINAL.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 2, 4, 6, 7, 10, 11, 16 and 17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

In claim 1, line 3, there is no antecedent basis for "the gear mechanism output shaft". In line 4, there is no antecedent basis for "the operating range".

In claim 2, line 2, it appears confusing to set forth that the stop is arranged such that is cannot be removed when claim 1 has already set forth that the stop is designed such that it can be removed. Clarification is requested.

In claim 16, it appears improper to further define the support frame when such is not part of the wiper drive. Such leads to confusion as to exactly what is being claimed. Is the support frame part of the wiper drive? Clarification is requested. Claim 16 does not appear to further limit the wiper drive.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 10, 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowski (German patent 10011842).

The patent to Ostrowski discloses the invention as is claimed, including a wiper drive comprised of a housing (8), a reversing motor (2) and a gear mechanism (3) connected to the motor. The gear mechanism has an output shaft (14) on which a swaying element (4) is mounted for driving wiper arms via wiper rods (7). The operating range of the swaying element lies within a pivoting range that is delimited by two mechanical stops (11,B). The stops are removable or movable since they are screws or bolts that are so attached to the housing. As such, it appears the stops are “designed” such that they can be removed or moved so that the swaying element when the wiper drive is mounted to a tubular support frame (1), can be moved from a first mounting position which lies outside the pivoting range, into the pivoting range without being obstructed by the stops. It appears nothing would stop or prohibit this functionality of the swaying element if the stops of Ostrowski are removed.

Claims 1, 2, 4, 6, 10, 11 and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by Ostrowski (German patent 10125988).

The patent to Ostrowski discloses the invention as is claimed, including a wiper drive comprised of a housing (2), a reversing motor (not shown but disclosed) and a gear mechanism (not shown but disclosed) connected to the motor. The gear mechanism has an output shaft (3) on which a swaying element (4) is mounted for driving wiper arms via wiper rods (6) in known fashion. The operating range of the swaying element lies within a pivoting range that is delimited by two mechanical stops (7) arranged on "add-on" element (9). The stops are non-removable from the "add-on" element which is removable from the housing (2) via screws (5). As such, it appears the stops are "designed" such that they can be removed or moved so that the swaying element when the wiper drive is mounted to a tubular support frame (1), can be moved from a first mounting position which lies outside the pivoting range, into the pivoting range without being obstructed by the stops. It appears nothing would stop or prohibit this functionality of the swaying element if the stops of Ostrowski are removed.

With respect to claim 4, it appears the "add-on" element of Ostrowski is suitable for exerting a retaining function as such defines no particular structure for the add-on element. At least none not disclosed by Ostrowski. Further, note that the support frame does not appear to be claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claim 7 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski (German patent 10125988).

The patent to Ostrowski '988 discloses all of the above recited subject matter with the exception of the add-on element being of sheet metal.

While Ostrowski does not specify the material for the add-on element (9), to make such of sheet metal would have been obvious. Use of sheet metal is well established in the automotive industry. Sheet metal is a durable and inexpensive material. It would have been obvious to one of skill in the art to make the add-on element of Ostrowski of sheet metal, as a mere choice of materials, to provide such as an inexpensive, durable component.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski (German patent 10011842) in view of Armbruster et al (German patent 26,36,419).

The patent to Ostrowski '842 discloses all of the above recited subject matter with the exception of setting forth that the swaying element is non-releasably fixed to the output shaft.

The patent to Armbruster discloses a windshield wiper assembly wherein support shaft (11) is non-releasably joined, via welding (19), with swaying element (16).

While Ostrowski does not specify the particular connection between the swaying element and the shaft it is mounted on he does appear to show both a releasable connection (fig.1) and non-releasable connection (fig.2). However, to non-releasably connect such would have been obvious to one of skill in the art. Both releasable and non-releasable connections between cranks and shafts is notoriously well known in the windshield wiper arts. Such is based more on the particular assembly/disassembly requirements and desires than on any inventive concept. Further, Armbruster clearly sets forth the locking or non-releasably joining of a crank with its supporting shaft.

It would have been obvious to one of skill in the art to make the connection between the swaying element and the output shaft of Ostrowski as non-releasable, as is well known and as set forth by Armbruster, to provide the predictable prevention of inadvertent separation between the swaying element and shaft.

Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over Ostrowski (German patent 10125988) in view of Armbruster et al (German patent 26,36,419).

The patent to Ostrowski '988 discloses all of the above recited subject matter with the exception of setting forth that the swaying element is non-releasably fixed to the output shaft.

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It would have been obvious to one of skill in the art to make the connection between the swaying element and the output shaft of Ostrowski as non-releasable, as is well known and as set forth by Armbruster, to provide the predictable prevention of inadvertent separation between the swaying element and shaft.

Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary K. Graham whose telephone number is 571-272-1274. The examiner can normally be reached on Tuesday to Friday (7:00-5:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Monica S. Carter can be reached on 571-272-4475. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Gary K Graham/
Primary Examiner, Art Unit 3727

GKG
08 September 2009